

Tentative Rulings for November 21, 2022

Department S303

**To request oral argument, you must notify
Judicial Secretary Tiffany Uhls at (760) 904-5722 and
inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department S303 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT REMOTELY WHEN REQUESTING ORAL ARGUMENTS.

REMOTE APPEARANCES: The court uses Zoom for remote appearances. Parties can log into Zoom on their device or opt to call into the scheduled hearing by using one of the following Zoom telephone numbers and the meeting ID for this department:

- Call-in Numbers: 1 (833) 568-8864 (TOLL FREE); 1 (669) 254-5252;
1 (669) 216-1590; 1 (551) 285-1373 or 1 (646) 828-7666
- Zoom Meeting ID: **161 128 8613**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at: <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php> .

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CVSW2104334	SEARCY VS JEFFERSON AVENUE TEMECULA, LLC	MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION BY JEFFERSON AVENUE TEMECULA, LLC
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Tentative Ruling:

Defendant's unopposed motion for summary judgment is Granted.

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law according to Code of Civil Procedure §437(c)c. This action arises out of a commercial lease. Plaintiff Martisa Searcy alleges that she entered into a written lease with defendant Jefferson Avenue Temecula, LLC to rent commercial space located at 27355 Jefferson Ave, #C/D in Temecula to operate a beauty supply store and salon starting November 1, 2019. Plaintiff alleges Defendant failed to timely deliver possession of the premises with a certificate of occupancy.

Defendant now moves for summary judgment and/or adjudication of each cause of action. Defense relies on the fact that most of the issues raised in summary judgment were adjudicated in a decision affirmed by the appellate division in the matter of Jefferson Avenue Temecula LLC v. Searcy APRI2100068/UDSW2100004. In this unlawful detainer action, successfully prosecuted by Jefferson Avenue against Ms. Searcy, the court made factual findings 1- that there was no delay in delivering possession of the premises to Ms. Searcy and 2- that there was no agreement that Ms. Searcy did not need to pay rent for certain months.

In filing its motion for summary judgment, Defendant gave Plaintiff more than 80 days' notice as required (75 days for the MSJ, plus 5 for service (Code Civ. Proc. (CCP), §§ 437c, subd. (a), 1013, subd. (a))), and service was made to the proper address. Plaintiff, who is pro per who filed opposition to a demurrer in this case, filed no opposition to Defendant's motion for summary summary judgment. The unopposed motion is therefore **Granted**.

2.

MCC2001791

DEVRIES VS HYUNDAI
MOTOR AMERICA

DEMURRER/ MOTION TO STRIKE
COMPLAINT OF JOHN DEVRIES

Tentative Ruling:

Plaintiff's Complaint charges a violation of the Song-Beverly Act, alleging (1) breach of express warranty (§§ 9–11), and (2) breach of implied warranty of merchantability (§§ 14–15) both in a single cause of action. Under the Song Beverly Act each of these claims constitutes a separate “cause of action” because each is seen as a separate and distinct wrongful act that calls out a separate theory of liability. (*Lilienthal & Fowler v. Sup. Ct.* (1993) 12 Cal.App.4th 1848, 1853–54.) Each arises from a distinctly separate legal obligation or claim of right and (2) each has its own set of elements that will be established by different evidence.

In *Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, the court held that a special demurrer was properly sustained “where two causes of action ha[d] been united without being separately stated.” (*Id.* at 9; *see also Brush v. Big Bear Lake Tavern* (1938) 29 Cal.App.2d 69, 72 [holding that the special demurrer was properly sustained where “separate causes of action were commingled in a single count without any attempt to state them separately”].) Moreover, CRC Rule 2.112 provides that “[e]ach **separately stated cause of action** . . . must specifically state (1) [i]ts number (e.g., “first cause of action”); (2) [i]ts nature (e.g., “for fraud”); (3) [t]he party asserting it if more than one party is represented on the pleading (e.g., “by plaintiff Jones”); and (4) [t]he party or parties to whom it is directed (e.g., “against defendant Smith”).”

Each of these causes of action has distinct elements that must be proven. For a breach of implied warranty of merchantability claim, a plaintiff must prove that (1) he purchased a consumer good from defendant, (2) at the time of the purchase, defendant was in the business of selling or manufacturing said consumer goods, and (3) the consumer good was not of the same quality as those generally acceptable in the trade, or was not fit for the ordinary purposes for which the goods are used. (CACI No. 3210.)

In a breach of express warranty claim, a plaintiff must prove that (1) he purchased or leased a new motor vehicle from defendant, (2) defendant provided a written warranty to plaintiff in connection with the purchase or lease, (3) the vehicle had a defect that was covered by the written warranty, (4) the defect covered by the warranty substantially impaired the vehicle's use, value or safety to a reasonable person in plaintiff's position, (5) plaintiff delivered the vehicle to defendant or its authorized repair facility for repair of the covered defect, and (6) defendant failed to repair the covered defect within a reasonable number of attempts. (CACI No. 3200.) As such, the two causes of action must be pled separately because each of them arises from a separate claim of right or legal obligation and requires different facts with different elements.

Defendant next argues that Plaintiff's Complaint fails to plead sufficient facts to meet the heightened pleading standard applicable to his statutory claims, and is therefore, uncertain.

The general rule is that "statutory causes of action must be pleaded with particularity." (*Covenant Care, Inc. v. Sup. Ct.* (2004) 32 Cal.4th 771, 790.) Moreover, "a pleading must allege facts and not conclusions, and material facts must be alleged directly and not by way of recital. (*Ankeny v. Lockheed Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 537.) Plaintiff's Complaint arises under the Song-Beverly Act and alleges statutory claims. As such, Plaintiff's claims are subject to the heightened pleading standard for statutory claims. Even if they are not, the Complaint fails to include all the required elements needed to establish a cause of action for breach of express warranty. For example, the Complaint fails to allege, when the alleged issues occurred, which of the alleged issues the vehicle was presented to Defendant's authorized repair facility for repair, which service visits occurred during the warranty period, the number of days the vehicle was down per service visit, and whether Plaintiff is currently experiencing those issues with the vehicle. (Def.'s Demurrer 8: 20–25.) These allegations are important in determining whether Plaintiff can maintain a viable claim for breach of express warranty under the Song-Beverly Act. (*See* CACI No. 3202; *see also Daughtry v. Am. Honda Motor Co., Inc.* (2004) 144 Cal.App.4th 824, 830–32.)

Thus, Defendant's demurrer is sustained as to the express warranty claim because the Complaint fails to allege the ultimate facts required under California law.

Defendant's demurrer is sustained with twenty days' leave to amend. The ruling on the demurrer renders the motion to strike moot.